

ORIGINAL
STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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IN THE MATTER OF AN INVESTIGATION TO)	CAUSE NO. 38149
DETERMINE THE EXTENT OF REGULATION OF)	
WIDE AREA TELEPHONE SERVICE (WATS))	<u>FIFTH SUPPLEMENTAL</u>
RESELLERS BY THE COMMISSION PURSUANT)	<u>ORDER</u>
TO PUBLIC LAW 92-1985, I.C. 8-1-2.6-1,)	
ET. SEQ.)	APPROVED: MAY 24 1996

BY THE COMMISSION:

G. Richard Klein, Commissioner
Abby R. Gray, Administrative Law Judge

On January 20, 1988, the Commission issued an Order in the above-captioned Cause, declining to exercise full jurisdiction over the resellers of wide area telephone service ("WATS") and intrastate interexchange telecommunications services. A supplemental order excluding alternative operator services from consideration in this Cause was issued February 1, 1989, and a second supplemental order was issued on March 11, 1992, which proposed in Finding No. 2 an amendment of the tariff filing requirement established in Finding No. 5(b) of the Order dated January 20, 1988 for proposed new services. A third supplemental order was issued on April 8, 1992, which amended the tariff filing requirements.

The Commission issued a fourth supplemental order on April 3, 1996, giving interested parties 20 days to file written comments or requests for public hearing. On April 23, 1996, Telecommunications Resellers Association filed its comments supporting the Commission proposal. On April 24, 1996, Frontier Communications International, Inc. filed its objections and comments regarding the Commission proposal. No requests for hearing were received by the Commission.

Based upon a review of the official Commission files, the comments filed and the applicable law, the Commission now finds as follows:

1. Commission Jurisdiction. By our Order issued in this Cause on January 20, 1988, we found that we had jurisdiction over WATS resellers, pursuant to I.C. 8-1-2-88 and that we had subject matter jurisdiction to determine the extent to which our jurisdiction would be exercised, pursuant to I.C. 8-1-2.6-2.

Pursuant to I.C. 8-1-2-72, the Commission may, at any time, upon notice and opportunity to be heard, rescind, alter or amend its Order issued in this Cause on January 20, 1988. Therefore, the Commission has jurisdiction over all WATS resellers certificated pursuant to the procedures established in this Cause to amend the tariff filing requirements for new telecommunications services.

The Commission proposes that the provision of WATS and intrastate interexchange services for resale at rates typical of competitively priced services may be accomplished by further declination of jurisdiction by the Commission to allow resellers of WATS and/or interexchange intrastate telecommunications services, certificated pursuant to Cause No. 38149 issued January 20, 1988, to render such services without requiring a tariff filing with the Engineering Division of the Commission.

2. Filed Comments. The Telecommunications Resellers Association ("TRA") filed written comments supporting the Commission proposal to eliminate tariff filing requirements. TRA states that the elimination of tariff filing requirements will produce a benefit for the public, resellers and the Commission. TRA states that even an administrative requirement such as the filing of tariffs can burden the managerial resources of smaller interexchange resellers or create an effective barrier for market entry to the ultimate detriment of the public, which will have fewer choices in terms of services and prices. Therefore, the elimination of tariff requirements will contribute further to opening the market to new and innovative service providers as the Indiana Legislature envisioned in I.C. 8-1-2.6-1. TRA further states the Commission will also benefit from the alleviation of information tariffing requirements by freeing Commission resources to pursue more pressing areas of regulation without sacrificing its overall ability to monitor the activities of interexchange service providers.

TRA also states that tariff filing requirements are no longer necessary in today's competitive interexchange market. TRA states that there are presently more than 500 non-facilities-based resellers nationwide and over 200 certified resellers in Indiana and that in such a robust competitive environment, the kind of strict regulatory framework that was necessary under an emerging competitive interexchange market is no longer appropriate. TRA states competition has effectively taken the place of regulation as a check on the pricing strategies of the various competitors and has allowed the public to encourage the growth of those companies offering superior products and services. TRA states the informational benefit to the public is extremely dubious in that the majority of interexchange customers obtain information about service rates directly from the provider and not the Commission. Further, if the customer has a question concerning interexchange charges, the customer will be able to obtain service information directly and more expeditiously from the service provider. TRA concludes by stating the Commission proposal is in conformity with the Telecommunications Act of 1996 and deregulation in other states.

Frontier Communications International, Inc. ("Frontier") filed objections to the Commission proposal. Frontier states that although strict tariff requirements for WATS resellers are no

longer necessary in a market characterized by substantial competition, this situation does not justify a mandatory detariffing policy. Rather, the Commission should still permit resellers to tariff the basic terms and conditions under which they hold their services out to the public. Frontier states that tariffing of basic terms and conditions lends certainty to the rules of the game between an interexchange carrier and its customers. Frontier states this certainly is procompetitive and beneficial to both carriers and customers and the Commission should permit its continuation.

Frontier also states the Commission's administrative expense of processing such filings are not tremendously burdensome, especially as these costs should be covered by the public utility fees. Frontier also argues that to the extent detariffing is put into place, the Commission should reduce this fee accordingly.

Frontier states that a permissive detariffing policy may take one of two forms. Under the first, which Frontier favors, the Commission would permit, but not require, resellers to tariff the rates, terms, and conditions of their intrastate offerings. Under the second, the Commission would preclude the filing of rates, but would continue to permit resellers to tariff the basic terms and conditions under which they offer their interexchange services to the public. Frontier states a permissive detariffing policy would better serve the public interest than a mandatory detariffing policy. A permissive regime would provide resellers the flexibility to craft a regulatory environment that best suits their individual circumstances. A reseller, for example, that serves a large number of residential customers may well find it administratively easier to tariff basic residential services than to attempt to enter into a multitude of contracts with individual consumers. Frontier states on the other hand, a reseller that serves large business customers with specialized needs may well prefer to forgo tariff regulation for this segment of its customer base in favor of customized contract offerings. Frontier states that even if the Commission decides to preclude the tariffing of rates, it should still permit resellers to tariff their basic terms and conditions. Permitting the filing of such tariffs carries with it significant, countervailing public interest benefits. Frontier states the essential terms and conditions, such as limitation of liability and toll fraud provisions, are known in advance and define the commercial rules of the game between a reseller that chooses to tariff its terms and conditions and its customers. Frontier states that such certainty permits all parties prospectively to understand the nature of relationship and plan their conduct accordingly. A mandatory detariffing policy would eliminate this certainty for resellers that choose to avail themselves of this opportunity and for customers that select to transact business with those resellers. Frontier states that to the extent the customers dislike the particular terms and conditions contained in a tariff filed by a particular reseller,

those customers may always choose to deal with another provider. Frontier concludes by stating that permissive detariffing approach better advances the public interest than the Commission's mandatory detariffing proposal.

3. Discussion and Findings. The Commission has found in previous orders that the reseller market is competitive pursuant to I.C. 8-1-2.6 et seq. and there have been no suggestions to the contrary. The issue in this Order is whether there continues to be the need for tariff filing requirements for WATS resellers and/or interexchange intrastate telecommunications services. We are not convinced by Frontier's arguments that a permissive detariffing approach would better serve the public interest than the Commission's proposal. What Frontier suggests under a permissive detariffing policy could be accomplished by the reseller maintaining internal tariffs or price lists which contain basic terms and conditions under which they offer their interexchange services to the public. Then if a customer calls, the company can make it available directly to the customer. We see no difference whether the company maintains that price list or it is filed permissively with the Commission. In fact, a permissive filing could lead to more confusion if the company about which a customer were inquiring did not maintain a permissive tariff filing with the Commission, or if the tariff on file with the Commission were not current. Further, the Commission has received very few, if any, calls from customers requesting a reseller tariff.

The Commission agrees with TRA in that competition has effectively taken the place of regulation as a check on the pricing strategies of the various competitors and that the elimination of tariffing requirements for resellers of interexchange services will contribute further to opening the market to new and innovative service providers. The numerous tariff filings have imposed a serious administrative burden upon the resources of the Commission, resources that could be better utilized for other areas of regulation. Indiana Code 8-1-2.6 et seq. provides the flexibility for the administrative functions thereunder. The purpose of the tariff filing requirements was to monitor the market. Given the development in the current marketplace and the development of competition, the Commission finds that the tariff filing requirements are no longer necessary and that no public interest would be served by continuing to require the tariff filings. Therefore, the Commission finds that the tariff filing requirements for resellers for WATS and intrastate interexchange services are unnecessary and should be eliminated.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

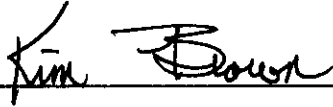
1. The tariff filing requirements for resellers of WATS and intrastate interexchange services shall be and are hereby eliminated.

2. This Order shall be effective on and after the date of its approval.

MORTELL, HUFFMAN, KLEIN AND ZIEGNER CONCUR:
APPROVED:

MAY 24 1996

I hereby certify that the above is a true and correct copy of the Order as approved.

A handwritten signature in cursive script, appearing to read "Kim Brown", is written over a horizontal line.

Kim Brown
Acting Secretary to the Commission